

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5058 OF 1995

The Navyug Niketan Co-operative
Housing Society Ltd. .. Petitioners.
Vs.
The Kala Bhavan Fine Arts
Foundation & Anr. .. Respondents.

Mr.D.R.Mehta with Tripti Shetty i/b M/s.Dhruve
Liladhar & Co. for the petitioners.
None present for the respondents.

CORAM : D.B.BHOSALE, J.

DATED : 2ND SEPTEMBER, 2005

P.C.:

. This petition is directed against the judgment and order dated 21.7.1995 passed by the Small Causes Court at Bombay in Interim Notice No.730 of 1995 in R.A.Decl.Suit No.274 of 1994 by which the notice was partly made absolute. The operative part of the impugned order reads thus:

"Notice is partly made absolute.
Defendants are directed to disclose the names of the Managing Committee members within a month from today.

Request of the plaintiffs to punish the defendants or Managing Committee members for breach of injunction order is refused. Request of the plaintiffs for reconstruction of roof through defendants or reconnection of electric supply through defendants is refused. In view of the findings on point No.5 and 7 the plaintiffs are at liberty to restore the roof condition and electric supply as permissible under law.

Plaintiffs are at liberty to deposit the entire arrears of rent/compensation at the rate of Rs.3,000/-

per month upto date on or before 11.8.1993. Thereafter the plaintiffs to continue to deposit the rent of every month in court on or before 11th day of every succeeding month.

Defendants are at liberty to withdraw the amount as and when deposited by the plaintiffs. Deposit of amount by the plaintiffs and withdrawal made by the defendants will be without prejudice to the rights of either party and in particular without prejudice to the rights of the defendants who have instituted R.A.E. & R. suit No.251/522 of 1993 pending in court room no.26.

No order as to costs.

The learned advocate Mr.S.J.Shah for the defendants submitted that operation of this order should be stayed for two months as the defendants wish to considering to challenge this order in appeal. Operation of this order is stayed till 11.8.1995."

2. The petitioners are the original defendants. They challenged the judgment and order dated 21.7.1995 in the instant writ petition which came to be admitted on 20.10.1995 and ad-interim stay in terms of prayer clause (c) was also granted with liberty to the respondents to apply for vacating the order after giving 48 hours notice to the petitioners. Prayer clause (c) reads thus:

"(c) that the pending the hearing and final disposal of this Petition, the operation of the impugned order dated 21st July 1995 passed on Interim Notice No.730 of 1995 in R.A.D.Suit No.274 of 1994 be stayed."

3. Mr.Mehta, learned counsel for the petitioners states that the respondents have never applied for vacating the interim order as per the liberty granted by this court and as a result of

which the impugned judgment and order remained stayed all these years. On last three occasions none was present for the respondents and even today none is present. Mr.Mehta, learned counsel for the petitioners submitted that the petitioners have been depositing rent in Small Causes Court and are in occupation of the suit premises till this date. He further informed that the suit is still pending. Keeping in view the overall facts and circumstances of the case and considering that the interim order granted by this Court on 20.10.1995 operates till today, in my opinion, this petition can be conveniently disposed of by the following order:

1. The Small Causes Court shall endeavour to dispose of R.A.Decl.Suit No.274 of 1994 as expeditiously as possible and preferably within a period of one year from the date of receipt of this order on merits in accordance with law. The interim order passed by this court on 20.10.1995 shall remain operative till the disposal of the suit.

2. The Small Causes Court shall decide the suit uninfluenced by the observations made in the judgment and order impugned in the present writ petition and the interim order passed by this court.

. The writ petition is, accordingly, disposed

of.

(D.B.Bhosale, J.)